

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

**IN RE: Raymond E. Johnson dba Ray-Lou Realty, LLC
Bridgestone Americas Tire Operations, LLC**

FILE NO.: OCI-SR-18-3

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, ("R.I. Gen. Laws") you are hereby notified that the Director of the Department of Environmental Management (the "Director" of "DEM") has reasonable grounds to believe that the above-named parties ("Respondents") have violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 29 August 2014 and 18 September 2014, the DEM issued a Notice of Intent to Enforce ("NIE") to Bridgestone Americas Tire Operations, LLC ("BATO") and Raymond E. Johnson ("Johnson"), respectively, for the violations that are the subject of this Notice of Violation ("NOV"). The NIE required specific actions to address the violations. On 17 November 2014, the DEM received a letter from BATO in response to the NIE. The letter stated that BATO had discussed the NIE with Johnson and they intended to work together to comply with the NIE. As of the date of the NOV, Respondents have failed to comply with the NIE.

C. Facts

- (1) The property is located on Brayton Road in the Town of Tiverton, Rhode Island, otherwise identified as Tiverton Tax Assessor's Plat 506, Lot 110 (the "Property").
- (2) Ray-Lou Realty, LLC owns the Property.
- (3) On 1 June 2015, the Rhode Island Secretary of State revoked the Certificate of Registration/Organization for Ray-Lou Realty, LLC. Johnson is the last known manager of the corporation.
- (4) Solid waste generated by Firestone Tire & Rubber Company was deposited in a landfill on the Property (the "Landfill") from the approximate period of the year 1954 to the year 1961.
- (5) BATO is a successor to Firestone Tire & Rubber Company.

- (6) The Property is in a GA Groundwater Classification Zone, which are groundwater resources designated by the DEM as suitable for drinking water use without treatment.
- (7) The Property is located in an area designated by the Town of Tiverton as a residential zone. Numerous residences are located in the vicinity of the Property.
- (8) The DEM is in receipt of the following documents (collectively, the “Investigation Reports”) pertaining to the Landfill:
 - (a) *Preliminary Assessment Report* dated 5 February 1987 and prepared by the DEM.
 - (b) *Screening Site Inspection Report* dated 18 December 1990 and prepared by NUS Corporation.
 - (c) *Final Site Inspection Prioritization Report* dated 21 January 1997 and prepared by Roy F. Weston, Inc.
 - (d) *Limited Phase II Environmental Assessment Report* dated 8 September 1999 and prepared by Kaegael Environmental, Inc.
 - (e) *On-Site Reconnaissance Report* dated 21 September 2000 and prepared by Roy F. Weston, Inc.
 - (f) *Source Sampling/Monitoring Well Installation Report* dated 9 January 2001 and prepared by Roy F. Weston, Inc.
 - (g) *Groundwater and Drinking Water Sampling Report* dated 22 and 23 January 2001 and prepared by Roy F. Weston, Inc.
 - (h) *Final Expanded Site Inspection Report* dated 25 March 2002 and prepared by Roy F. Weston, Inc.
 - (i) *Environmental Summary Report* dated November 2002 and prepared by EA Engineering, Science and Technology, Inc.
 - (j) *Site Investigation Report* dated September 2005 and prepared by Premier Environmental Services, Inc.
 - (k) *Phase I Data Submittal and Phase II Workplan* dated 25 January 2016 and prepared by EarthCon Consultants, Inc. (the “2016 Report”).

- (9) The Investigation Reports reveal that a release of hazardous materials (metals and volatile organic compounds) has occurred on the Property at concentrations that exceed the DEM's *Method One Residential Direct Exposure Criteria*, the *GA Leachability Criteria* and the *GA Groundwater Objectives* set forth in the DEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases* (the "Remediation Regulations").
- (10) In the 2016 Report, EarthCon Consultants, Inc. ("ECI") presented a proposed scope of work ("SOW") for a Phase II site investigation on behalf of Respondents. The proposed SOW included additional site investigation and the submittal of a revised Site Investigation Report ("SIR") and a proposed Remedial Action Work Plan ("RAWP").
- (11) On 11 March 2016 via electronic mail message, ECI presented additional details to the proposed SOW to the DEM.
- (12) On 8 April 2016 via electronic mail message, the DEM notified ECI that the proposed SOW had been reviewed and approved (the "Approved SOW").
- (13) On 11 May 2016 via electronic mail message, ECI notified the DEM that the Approved SOW would be implemented on 17 May 2016.
- (14) As of the date of the NOV, Respondents have failed to submit a revised SIR and a proposed RAWP to the DEM.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws, Sections 23-19.1-22(a), 23-19.14-6, 46-12-5 and 46-13.1-4** – prohibiting the unpermitted release of hazardous materials to the land and waters of the State.
- (2) **DEM's Remediation Regulations, Rule 4.01** – prohibiting the release of any hazardous material in any manner that may impact the classification or uses of the land, groundwater, or surface water of the State without complying with all applicable rules and regulations.
- (3) **DEM's Remediation Regulations, Rule 4.02** – requiring that parties responsible for hazardous material releases immediately initiate investigations and actions as specified in Sections 5 through 12 of the DEM's Remediation Regulations.
- (4) **DEM's Remediation Regulations, Rule 9.01** – requiring responsible parties for a contaminated site where remedial action is found to be necessary to prepare and submit to the DEM a proposed Remedial Action Work Plan detailing how the proposed remedial action will be implemented.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 30 days of receipt of the NOV**, submit to the DEM a revised, complete SIR in accordance with the Approved SOW.
- (2) **Within 120 days of receipt of the NOV**, submit to the DEM a proposed RAWP.
- (3) The SIR and RAWP shall be subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies in the SIR or RAWP, you must submit to the DEM a modified proposal or additional information necessary to correct the deficiencies.
- (4) Commence work on the project in accordance with the method approved by the DEM within 20 days of approval (unless otherwise expressly authorized by the DEM in writing to commence work later), and complete such work within 120 days of said approval or other date specified by the DEM.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

\$31,250

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Environmental Response Fund," and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with the NOV.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7 (B) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then the NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of Tiverton, Rhode Island wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 23-18.9-13, as is or as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey D'Amadio Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

By: _____
David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Raymond E. Johnson dba Ray-Lou Realty, LLC
691 Brayton Road
Tiverton, RI 02878

Bridgestone Americas Tire Operations, LLC
c/o National Registered Agents, Inc., Registered Agent
450 Veterans Memorial Parkway, Suite 7A
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, SITE REMEDIATION
 File No.: OCI-SR-18-3
 Respondents: Raymond E. Johnson dba Ray-Lou Realty, LLC and Bridgestone Americas Tire Operations, LLC

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) and (2) – Release of hazardous materials	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$12,500	One violation	\$12,500
D (3) and (4) – Failure to fully investigate and develop a RAWP for the release	Type I <i>(\$25,000 Max. Penalty)*</i>	Major	\$18,750	One violation	\$18,750
SUB-TOTAL					\$31,250

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NON-COMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the non-compliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$31,250

PENALTY MATRIX WORKSHEET

CITATION: Release of hazardous materials

VIOLATION NOS: D (1) and (2)

TYPE		
<p style="text-align: center;">___X___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: A release of hazardous materials, at concentrations exceeding the criteria set forth in the DEM's Remediation Regulations, has occurred on the Property. The release of hazardous materials has impacted the classification and use of the land and groundwater of the State without the authorization of the DEM. Such releases are prohibited by the R.I. Gen. Laws and the DEM's Remediation Regulations. Prohibiting and controlling releases of hazardous materials is of primary importance to the regulatory program.</p> <p>(B) Environmental conditions: The Property is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Residences near the Property rely on private drinking water wells. The Property is located within 2,200 feet of a wellhead protection area for a community water supply well. The Property is located within the Westport River/Frontal Rhode Island Sound watershed. The northern and eastern perimeters of the Property are comprised of regulated freshwater wetlands associated with Adamsville Brook.</p> <p>(C) Amount of the pollutant: The 2005 <i>Site Investigation Report</i> conveyed the following analytical results: shallow soil sampling revealed concentrations of beryllium in 1 sample and lead in 2 samples that exceeded the remedial objectives; deep soil sampling revealed concentrations of beryllium in 4 samples, barium in 5 samples, lead in 16 samples, cadmium in 6 samples and mercury in 3 samples that exceeded the remedial objectives; shallow groundwater sampling revealed concentrations of cadmium in 4 samples, chromium in 1 sample, lead in 3 samples, mercury in 1 sample, selenium in 3 samples, benzene in 12 samples and 1, 1 dichloroethane in 5 samples that exceeded the remedial objectives; and bedrock groundwater sampling revealed concentrations of benzene in 6 samples, 1,1 dichloroethylene in 1 sample and 1,1 dichloroethane in 9 samples that exceeded the remedial objectives. The most recent laboratory analytical results submitted to the DEM reported concentrations of benzene in groundwater at 0.0064 milligrams per liter ("mg/L") and 0.022 mg/L and arsenic in groundwater at 0.013 mg/L and 0.019 mg/L. The concentrations of these hazardous materials exceed the <i>GA Groundwater Objectives</i> set forth in the DEM's Remediation Regulations.</p> <p>(D) Toxicity or nature of the pollutant: Arsenic and benzene and other metals and volatile organic compounds are hazardous and toxic to humans. Arsenic and benzene are known human carcinogens. These hazardous materials have impacted groundwater on the Property in an area where residences rely on private drinking water wells.</p> <p>(E) Duration of the violation: Full duration unknown - the DEM was first notified of a potential hazardous material release on the Property in 1986. The DEM is only assessing a penalty for the last 4 years.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** BATO deposited waste materials (generated by their business operations) on the Property for approximately 6 years. Johnson did not own the Property at the time that the Landfill was in operation. Respondents have yet to fully mitigate the non-compliance despite receiving the NIE from the DEM, which required that they do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** BATO willfully deposited their waste materials on the Property during the Landfill operation period. Respondents, as the generator of the waste deposited in the Landfill and current owner of the Property, had control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for the calculation.

<u> X </u> MAJOR	MODERATE	MINOR
--------------------	----------	-------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$12,500	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to fully investigate and develop a RAWP for the release
 VIOLATION NOS: D (3) and (4)

TYPE		
<p style="text-align: center;">___X___ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Part 1.10A.1.b of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: Respondents failed to fully investigate and develop a RAWP for the release of hazardous materials that has occurred on the Property, as is required by the DEM's Remediation Regulations. The investigation and remediation of hazardous material releases by responsible parties is of primary importance to the regulatory program. Failure to fully investigate and take remedial action for hazardous material releases may result in threats to public health and safety, impacts to the classification or uses of the land and waters of the State and in degradation of the environment. Respondents have expended funds for the various investigatory activities that have been completed thus far, however, they have yet to complete the investigation and develop remedial alternatives for the DEM's review.</p> <p>(B) Environmental conditions: The Property is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. Residences near the Property rely on private drinking water wells. The Property is located within 2,200 feet of a wellhead protection area for a community water supply well. The Property is located within the Westport River/Frontal Rhode Island Sound watershed. The northern and eastern perimeters of the Property are comprised of regulated freshwater wetlands associated with Adamsville Brook.</p> <p>(C) Amount of the pollutant: The 2005 <i>Site Investigation Report</i> conveyed the following analytical results: shallow soil sampling revealed concentrations of beryllium in 1 sample and lead in 2 samples that exceeded the remedial objectives; deep soil sampling revealed concentrations of beryllium in 4 samples, barium in 5 samples, lead in 16 samples, cadmium in 6 samples and mercury in 3 samples that exceeded the remedial objectives; shallow groundwater sampling revealed concentrations of cadmium in 4 samples, chromium in 1 sample, lead in 3 samples, mercury in 1 sample, selenium in 3 samples, benzene in 12 samples and 1, 1 dichloroethane in 5 samples that exceeded the remedial objectives; and bedrock groundwater sampling revealed concentrations of benzene in 6 samples, 1,1 dichloroethylene in 1 sample and 1,1 dichloroethane in 9 samples that exceeded the remedial objectives. The most recent laboratory analytical results submitted to the DEM reported concentrations of benzene in groundwater at 0.0064 milligrams per liter ("mg/L") and 0.022 mg/L and arsenic in groundwater at 0.013 mg/L and 0.019 mg/L. The concentrations of these hazardous materials exceed the <i>GA Groundwater Objectives</i> set forth in the DEM's Remediation Regulations.</p> <p>(D) Toxicity or nature of the pollutant: Arsenic and benzene and other metals and volatile organic compounds are hazardous and toxic to humans. Arsenic and benzene are known human carcinogens. These hazardous materials have impacted groundwater on the Property in an area where residences rely on private drinking water wells.</p> <p>(E) Duration of the violation: Approximately 14 years. Respondents were first notified of the requirement to develop a RAWP in the 1 December 2003 <i>Letter of Responsibility</i>. The DEM is only assessing a penalty for the last 4 years.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to prevent the non-compliance by submitting proposed remedial alternatives to the DEM. Respondents have yet to fully mitigate the non-compliance despite receiving the NIE from the DEM, which required that they do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for the failure to comply immediately with Rules 4.02 and 9.01 of the DEM's Remediation Regulations. Respondents, as a generator of the waste materials in the Landfill and the current owner of the Property, had control over the occurrence of the violation.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for the calculation.

<u> X </u> MAJOR	MODERATE	MINOR
--------------------	----------	-------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$18,750	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250